IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.413 OF 2004.

Sakharam Sambhu Jadhav. ... Appellant.

Versus.

Prakash Sakharam Jadhav and others. ... Respondents.

Shri Pratap Patil for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 8th August, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Appellant. The Appeal is filed by the original Defendant No.3 in a suit for partition which is decreed in favour of the Respondents Nos.1 and 2, who are original Plaintiffs. The decree has been confirmed in appeal by the District Court. Shri Patil appearing for the Appellant submitted that in respect of three agricultural lands decree for partition could not have been passed as the said lands cannot be said to be joint family properties, as the same are held as tenants. He submitted that the sale deed executed in favour of the Appellant has not been challenged in this suit and therefore, the said sale deed was binding on all the concerned parties.

2. I have considered the submissions. The Appellate Court as well as the trial Court have held that three agricultural lands were held by Sambhu Amruta Jadhav as a tenant who was the father of the original

Defendant No.1. After the demise of the said Sambhu in the year 1960, name of the Defendant No.1 was mutated in the revenue records. That is the reason why the case made out by the Defendant No.1 that he is the only tenant in respect of the three agricultural lands has not been accepted.

3. So far as the sale deed dated 30th April 1979 executed in favour of the original Defendant No.3-Appellant is concerned, the Appellate Court has dealt with the submissions made as regards the said sale deed. The Appellate Court has held that the Appellant did not step into the witness box to establish that she has really purchased the property under the sale deed. The Appellate Court has held that the sale deeds were executed only with the object of defeating the rights of the original Plaintiffs. In view of the said finding of fact no interference is called for in the second appeal under section 100 of the Code of Civil Procedure, 1908. There is no substantial question of law arising in this Appeal. Hence the appeal is dismissed with no order as to costs.

Judge.